

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SUZANNE KOLM
52 Oceanside Drive
Hull, Massachusetts 02045,

Plaintiff,

SUMMONS

Index No.:

v.

EAST AURORA UNION FREE SCHOOL DISTRICT
430 Main Street
East Aurora, New York 14052,

EAST AURORA MIDDLE SCHOOL
430 Main Street
East Aurora, New York 14052, and

KATHLEEN ANN KIRK
104 Castlewood Drive
Buffalo, New York 14227,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in this action, and to serve a copy of your Answer or, if the Complaint is not served with a Summons, to serve a Notice of Appearance, on Plaintiff's attorney within **twenty** (20) days after the service of this Summons, exclusive of the day of service, or within **thirty** (30) days after completion of service where service is made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

This action is brought in Erie County based on the locations of the incidents alleged herein and places of business and residences of Defendants.

DATED: July 31, 2019
Amherst, New York

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

SUZANNE KOLM,

Plaintiff,

v.

EAST AURORA UNION FREE SCHOOL DISTRICT,
EAST AURORA MIDDLE SCHOOL, and
KATHLEEN ANN KIRK,

Defendants.

**VERIFIED
COMPLAINT**

Index No.:

Plaintiff SUZANNE KOLM, by and through her attorneys, HOGANWILLIG, PLLC, as and for her Complaint against Defendants EAST AURORA UNION FREE SCHOOL DISTRICT (“DISTRICT”), EAST AURORA MIDDLE SCHOOL (“MIDDLE SCHOOL”), and KATHLEEN ANN KIRK (“KIRK”) herein, alleges as follows:

1. At all relevant times hereinafter mentioned, Plaintiff is currently a resident of the County of Plymouth County, State of Massachusetts.
2. During the period of time it is alleged the incidents herein occurred, Plaintiff was a resident of the County of Erie, State of New York.
3. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant DISTRICT was and is a quasi-municipal corporation organized and existing pursuant to the laws of the State of New York, with a principal place of business located at 430 Main Street, East Aurora, County of Erie, and State of New York.
4. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant MIDDLE SCHOOL was a public middle school, located at 430 Main Street, East Aurora, County of Erie, and State of New York.

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5. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant DISTRICT operated and still operates school including Defendant MIDDLE SCHOOL (collectively referred to herein as the "EAST AURORA Defendants").

6. Upon information and belief, and at all relevant times hereinafter mentioned, Defendant KIRK was a resident of the County of Erie and State of New York.

FACTS COMMON TO ALL CLAIMS

7. Upon information and belief, during the times relevant to the allegations set forth herein, Defendant KIRK was employed by the EAST AURORA Defendants as a gym teacher in the 1970s.

8. Upon information and belief, during the times relevant to the allegations set forth herein, Defendant KIRK was under the direct supervision, employ, and/or control of the EAST AURORA Defendants.

9. Through her positions at, within, or for the EAST AURORA Defendants, Defendant KIRK was put in direct contact with Plaintiff, beginning in the early 1970s.

10. Plaintiff was a student at Defendant MIDDLE SCHOOL with Defendant KIRK as her physical education teacher in or about the early 1970s.

11. Starting in or around 1973 and lasting until 1975, Plaintiff was the victim of sexual harassment, sexual abuse, and violence by or at the direction of Defendant KIRK.

12. Upon information and belief, Defendant KIRK's sexual abuse began when Plaintiff was approximately 13 years old.

13. The incidents experienced by then-infant Plaintiff included, but are not limited to, the following:

- a. Defendant KIRK "groomed" then-infant Plaintiff beginning in or about 1973 by befriending her, and offering to meet with her privately.
- b. On numerous occasions, Defendant KIRK would ask then-infant Plaintiff to meet with her privately in a stairwell at Defendant MIDDLE SCHOOL, where Defendant KIRK would lift up Plaintiff's shirt to clean her glasses and pin her against the wall.
- c. On numerous occasions, Defendant KIRK would undress in front of then-infant Plaintiff while they were in Defendant KIRK's office alone.
- d. On June 8, 1974, Defendant KIRK visited then-infant Plaintiff at Plaintiff's house in East Aurora, New York, under the guise of comforting then-infant Plaintiff for the death of her mother, and groped then-infant Plaintiff.
- e. In or about July 1974, Defendant KIRK visited then-infant Plaintiff again at Plaintiff's house and inserted her fingers into then-infant Plaintiff's vagina, and forced then-infant Plaintiff to touch Defendant KIRK's genitalia.
- f. Defendant KIRK continued to groom then-infant Plaintiff by inviting her to stay overnight at Defendant KIRK's house on Friday evenings, under the guise of helping Plaintiff grieve over her mother.
- g. On numerous occasions, Defendant KIRK continued to grope and penetrate then-infant Plaintiff with her fingers.
- h. On numerous occasions, Defendant KIRK would perform oral sex on then-infant Plaintiff, and make Plaintiff reciprocate on Defendant KIRK.
- i. On at least one occasion, Defendant KIRK took then-infant Plaintiff to Marilla, New York on a trip and abused Plaintiff in a camper and in a field.

14. Upon information and belief, Plaintiff confided to Plaintiff's sister in or about 1977 about the abuse she suffered by Defendant KIRK, and Plaintiff's sister informed the School Board of Defendant DISTRICT.

15. Upon information and belief, the East Aurora DEFENDANTS did nothing to address Plaintiff's allegations at that time.

16. In or about 1982, Plaintiff was contacted from a representative of the East AURORA Defendants to inform Plaintiff that an investigation was being opened against Defendant KIRK.

17. Upon information and belief, Defendant KIRK admitted to the East Aurora Defendants that she had slept with Plaintiff, then an infant.

18. Upon information and belief, despite learning this information, the East Aurora Defendants closed the investigation, and Defendant KIRK remained employed with the East Aurora Defendants up to at least 2003.

19. This action is brought in Erie County based on the locations of the incidents alleged herein and places of business and residences of Defendants.

20. This action is brought pursuant to CPLR § 214-G, as added by the New York Child Victims Act, which has revived claims of child sexual abuse for a period of one year beginning on August 14, 2019, six months after the effective date of the section (February 14, 2019). This action is timely commenced.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENCE

21. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "20" as though more fully set forth herein.

22. Defendant KIRK, as an agent, servant, and/or employee of the EAST AURORA Defendants, was an educator who had physical custody of Plaintiff before, during, and after the school day, as well as for sanctioned activities such as teacher-student meetings, and owed Plaintiff a duty of care.

23. Defendants were *in loco parentis* and owed Plaintiff a duty of care.

24. Defendants breached their duty of care owed to Plaintiff when they allowed Plaintiff to be in contact with Defendant KIRK.

25. Defendants knew or should have known of the sexual abuse, sexual harassment and violence occurring at the EAST AURORA Defendants and breached their duty owed to Plaintiff when they failed to report the sexual abuse, sexual harassment, and violence occurring at the EAST AURORA Defendants and failed to remove Defendant KIRK.

26. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

27. As a result of Defendants' breach, Plaintiff has incurred and will incur medical costs to treat their past, present, and future psychological suffering as a result of being a victim of sexual abuse, sexual harassment, and violence at the EAST AURORA Defendants.

28. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS:
FAILURE TO REPORT

29. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "28" as though more fully set forth herein.

30. The EAST AURORA Defendants, through their agents, servants, and employees, were Mandated Reporters under New York Social Services Law.

31. The EAST AURORA Defendants, through their agents, servants, and employees, had reasonable cause to suspect that Plaintiff was being abused and/or maltreated by Defendant KIRK during the 1970s.

32. The EAST AURORA Defendants, through their agents, servants, and employees, knowingly and willfully failed to report the suspected child abuse and maltreatment to anyone, including the police or Child Protective Services.

33. Defendants did not provide their employees with written information on reporting requirements.

34. Defendants failed to follow the policies of required reporting including, but not limited to, New York Consolidated Laws, Social Services Law - SOS § 413.

35. Defendants are liable for the failure to report pursuant to New York Consolidated Laws, Social Services Law - SOS § 420.

36. The knowing and willful failure of Defendants, through the inaction of their agents, servants, and employees, to report the child abuse and maltreatment of Plaintiff was a proximate cause of Plaintiff's damages.

37. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS:
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

38. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "37" as though more fully set forth herein.

39. During the time period of approximately 1972-1975, the EAST AURORA Defendants allowed Defendant KIRK unrestricted access to Plaintiff and willfully and/or

intentionally ignored suspicious behavior and/or complaints against Defendant KIRK of sexual abuse, sexual harassment, and violence.

40. During the time period referenced above, the EAST AURORA Defendants willfully and/or intentionally ignored Plaintiff's safety by requiring Plaintiff to be under the supervision of Defendant KIRK by herself before, during, and after school, including on school-sanctioned trips.

41. The EAST AURORA Defendants were deliberately indifferent to the risk of sexual harassment and violence posed to Plaintiff by being alone with Defendant KIRK.

42. Defendants willfully and/or intentionally created a hostile and unsafe school environment that no child would be able to tolerate.

43. Defendants, in order to avoid embarrassment, scandal, and negative publicity, intended to cause Plaintiff shame, humiliation, and extreme emotional distress so she would stay silent, and not report the abuse.

44. Defendants behaved in a manner toward Plaintiff that was so outrageous as to exceed all reasonable bounds of decency.

45. Defendants knew with substantial certainty or should have known that their behavior would cause Plaintiff to be a victim of sexual abuse, sexual harassment, and violence.

46. Defendants knew with substantial certainty or should have known that their behavior would cause severe emotional distress to Plaintiff.

47. The foregoing acts of Defendants caused Plaintiff physical, mental and emotional distress.

48. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS

49. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "48" as though more fully set forth herein.

50. The EAST AURORA Defendants were negligent for failing to address prior complaints against Defendant KIRK of sexual harassment, sexual abuse, and violence, and/or negligently ignored complaints and concerns from both Plaintiff and other students and faculty.

51. The EAST AURORA Defendants were negligent when they allowed Plaintiff to continue to be exposed to Defendant KIRK after being provided with warning signals such as suspicious behavior and/or allegations of sexual harassment, sexual abuse, and violence committed by Defendant KIRK.

52. The EAST AURORA Defendants knew or should have known this inaction would subject Plaintiff to further sexual harassment, sexual abuse, and violence, and knew or should have known this would unreasonably endanger Plaintiff's safety, cause them to fear for their safety, and cause them severe emotional distress.

53. The EAST AURORA Defendants owed a duty to Plaintiff to protect them from sexual harassment, sexual abuse, and violence from Defendant KIRK, including but not limited to when at the premises of the EAST AURORA Defendants.

54. The EAST AURORA Defendants breached the duty owed to Plaintiff to protect them from sexual abuse, sexual harassment, and violence from Defendant KIRK, including but not limited to when at the premises of the EAST AURORA Defendants.

55. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for their own physical safety.

56. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS: NEGLIGENT HIRING

57. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "56" as though more fully set forth herein.

58. The EAST AURORA Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

59. The EAST AURORA Defendants were obligated to Plaintiff to hire teachers, coaches, and other personnel to ensure that the school environment was a safe school environment for all children including Plaintiff.

60. The EAST AURORA Defendants knew or should have known at the time of Defendant KIRK's hiring of her propensity for the conduct which caused the injury.

61. Plaintiff was the victim of sexual abuse, sexual harassment, and violence by or at the direction of Defendant KIRK.

62. The EAST AURORA DEFENDANTS breached their duty of care to Plaintiff when they negligently hired Defendant KIRK.

63. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

64. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS:
NEGLIGENT SUPERVISION AND RETENTION

65. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "64" as though more fully set forth herein.

66. The EAST AURORA Defendants owed Plaintiff a duty of care to supervise and protect Plaintiff.

67. The EAST AURORA Defendants were obligated to Plaintiff to supervise the teachers, coaches, and other personnel to ensure that the school environment was a reasonably safe school environment for all children.

68. Plaintiff was a victim of sexual abuse, sexual harassment, and violence by or at the direction of Defendant KIRK.

69. The EAST AURORA Defendants had, or should have had knowledge of the sexual abuse, sexual harassment, and violence by or at the direction of Defendant KIRK and negligently ignored the sexual abuse, sexual harassment, and violence by or at the direction of Defendant KIRK.

70. The EAST AURORA Defendants did not terminate the employment of Defendant KIRK despite the sexual abuse, sexual harassment, and violence committed by Defendant KIRK.

71. The EAST AURORA Defendants breached their duty of care to Plaintiff when they negligently supervised and retained Defendant KIRK.

72. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for her own physical safety.

73. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS:
VIOLATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

74. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "73" as though more fully set forth herein.

75. Title IX of the Education Amendment of 1972 forbids a "funding recipient" from discriminating on the basis of sex in educational programs and activities.

76. Upon information and belief, the EAST AURORA Defendants are "funding recipients" under Title IX.

77. Defendant KIRK inappropriately touched Plaintiff and exposed Plaintiff to provocative acts, in violation of Title IX.

78. Defendant KIRK's verbal and physical conduct of a sexual nature was severe or pervasive enough to alter the conditions of Plaintiff's educational environment and created an abusive educational environment.

79. The EAST AURORA Defendants had the authority and duty to institute corrective measures.

80. The EAST AURORA Defendants acted with deliberate indifference in failing to respond to the sexual harassment and sexual abuse being perpetrated by Defendant KIRK.

81. The deliberate indifference of the EAST AURORA Defendants, and the sexual harassment and sexual abuse committed by Defendant KIRK, effectively barred Plaintiff access to various educational opportunities and benefits at the EAST AURORA Defendants and subjected Plaintiff to discrimination on the basis of sex in violation of Title IX.

82. Plaintiff suffered severe emotional and mental suffering and distress due to Defendants' actions, as well as fear for his own physical safety.

83. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

84. Plaintiff also seeks attorneys' fees under Title IX.

AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS:
PUNITIVE DAMAGES

85. Plaintiff repeats, reiterates, and realleges each and every allegation contained in paragraphs "1" through "84" as though more fully set forth herein.

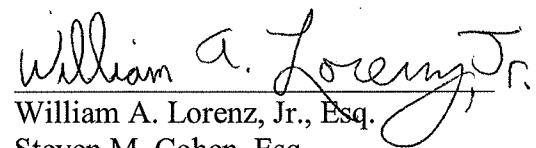
86. The EAST AURORA Defendants' knowledge of the violence, sexual harassment, and/or misconduct against Plaintiff by or at the direction of Defendant KIRK is tantamount to a wanton and conscious disregard for the safety of Plaintiff and others, and warrants the imposition of punitive damages.

87. By reason of the malicious, intentional, willful, and/or negligent conduct of Defendants herein, and by such other acts that were morally reprehensible, Defendants' conduct evidenced a callous disregard for the safety of Plaintiff, and said acts constituted a wanton, reckless and/or malicious disregard for the rights of others and as a result thereof, Plaintiff demands punitive damages.

88. By reason of the foregoing, Plaintiff has been damaged in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which exceeds the jurisdictional limits of all other courts which might otherwise have jurisdiction, and for such other and further relief to Plaintiff as this Court deems just and proper.

DATED: July 31, 2019
Amherst, New York

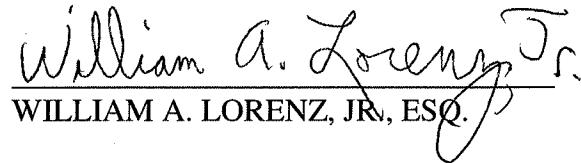


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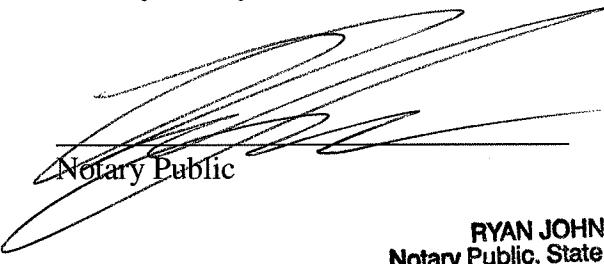
ATTORNEY VERIFICATION PURSUANT TO CPLR § 3020(d)(3)

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

WILLIAM A. LORENZ, JR., ESQ., being duly sworn deposes and says: that he is the attorney for Plaintiff SUZANNE KOLM, in the above matter; that he has read the foregoing Complaint and knows the contents thereof; that the same is true to his knowledge except as to those matters alleged to be upon information and belief, and as to those matters, he believes them to be true; that the grounds of his belief as to all matters not stated upon his personal knowledge are correspondence and other writings furnished to him by and through interviews with Plaintiff; and that the reason this Verification is not made by Plaintiff is that Plaintiff does not reside in the county where the undersigned attorney maintains his office.


William A. Lorenz, Jr.
WILLIAM A. LORENZ, JR., ESQ.

Sworn to before me this
31st day of July, 2019


Notary Public

RYAN JOHNSEN
Notary Public, State of New York
No. 02JO6318664
Qualified in Erie County
Commission Expires Jan. 26, 2022